

Remarks

The above-referenced patent application has been reviewed in light of the Final Office Action, dated July 27, 2007. Reconsideration of the above-referenced patent application in view of the following remarks is respectfully requested.

Applicant has cancelled claims 1-14 and 16-27 without prejudice, has amended claim 15 and has added new claims 28-53. Claims 12, 14 and 16-22, 25 and 26 were previously withdrawn as non-elected claims subject to a restriction requirement. Applicant cancels these claims without prejudice for clarity. Applicant has added new claims 28-53 and submits that no new matter has been added. Applicant submits that newly added claims 28-53 belong to the elected Group I species. Support for new claims 28-53 may be found at least at [0008]-[0043]. Applicant believes that the claims as presently amended are in condition for allowance.

Applicant has amended the drawings and believes that the amended drawings overcome the objection to the drawings.

Status of the Claims

Claims 1-14 and 16-27 are cancelled.

Claim 15 has been amended.

New claims 28-53 have been added.

Rejections Under 35 U.S.C. §103(a)

The Examiner previously rejected claims 1-4, 7, 8, 10, 11, 13, 15 and 24 as being unpatentable over Japan Patent No. JP472145A ("Nakajima") in view of Japan Publication No. 2002220059 ("Inoac"). The Examiner previously rejected claims 1-5, 8, 10, 15 and 23 as being unpatentable over Japan Patent No. JP472145A ("Nakajima") in view of U.S. Patent No. 5,067,207 ("Semons"). The Examiner previously rejected claim 27 as being unpatentable over

Japan Patent No. JP472145A (“Nakajima”) in view of U.S. Patent No. 4,763,783 (“Talbot”).

These rejections are respectfully traversed.

The Examiner is reminded that to successfully make a prima facie rejection under 35 USC § 103, the Examiner must show that Assignee’s claimed subject matter would have been obvious to one of ordinary skill in the art pertinent to Assignee’s claimed subject matter at the time it was made. *See KSR International, Co. v. Teleflex, Inc.*, 550 U.S. ____ (decided April 30, 2007). Some of the factors to consider in this analysis include the differences between the applied documents and Assignee’s claimed subject matter, along with the level of skill associated with one of ordinary skill in the art pertinent to Assignee’s claimed subject matter at the time it was made. *See* USPTO Memo entitled “Supreme Court decision on *KSR Int’l. Co., v. Teleflex, Inc.*,” (May 3, 2007). One way in which an Examiner may establish a prima facie case of unpatentability under 35 USC § 103 would be to show that three basic criteria have been met. First, the Examiner should show that the applied documents, alone or in combination, disclose or suggest every element of Assignee’s claimed subject matter. Second, the Examiner should show that there is a reasonable expectation of success from the proposed combination. Finally, the Examiner should show that there was some suggestion or motivation, either in the applied documents themselves or in the knowledge generally available to one of ordinary skill in the art pertinent to the claimed subject matter at the relevant time, to modify the document(s) or to combine document teachings. The motivation or suggestion to make the proposed combination and the reasonable expectation of success should be found in the prior art, and should not be based on Assignee’s disclosure. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *See* MPEP § 2142; 2143 - § 2143.03 (regarding decisions pertinent to each of these criteria). It is respectfully asserted that the Examiner has not met these standards.

Furthermore, on October 10, 2007, the USPTO published in the Federal Register its Examination Guidelines under 35 USC 103 in view of the *KSR* decision, cited above. These

guidelines contain a number of points. In particular, the new Guidelines state that an Examiner must articulate a reason or rationale to support an obviousness rejection. Specifically, Examiners must articulate findings as to the scope and content of the prior art to support the obviousness rejection being made. The Examiner should focus on the state of the art and not on impermissible hindsight (e.g., the applicant's disclosure). Specifically, Examiners need to account for all claim limitations in their rejections, either by indicating how each limitation is shown by the applied documents or by providing an explanation. Thus, Examiners must explain the reasoning that provides a nexus between the factual findings and the legal conclusion of obviousness. Applicant respectfully asserts that the Examiner has not made this showing.

Turning to the art relied upon by the Examiner in the rejections, Nakajima teaches a method of creating a cover for a container to reduce design cut waste from making the cover. The cover is made from two sheets that are cut to cover front, back, side and/or bottom and top surfaces of the container and which attach together with fasteners and ropes to cover the container. [See Nakijima Abs.and Figs.]

However, Nakajima does not teach or suggest "at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover **to form a substantially air tight seal over said portion of said form-fitting cover, wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion of said object,**" as presently claimed in new claim 28. Nothing in Nakajima teaches or suggests anything, let alone a coupling member, that forms a substantially air-tight seal over a form-fitting cover. Nothing in Nakajima teaches or suggests a form-fitting cover adapted to cover an object to create a substantially air tight seal over at least one portion of the object, as presently claimed in claim 28. Rather, the cover taught by Nakajima, as shown in the figures, is not air tight, as is evidenced by the fact that the sheets are held together with ropes, which do not create an air tight

seal. Thus, there is nothing, let alone a form-fitting cover and a coupling member, that is adapted to create a substantially air tight seal in Nakajima.

Nothing in Inoac makes up for the deficiencies of Nakajima. Inoac teaches a cover for goods having engagement members which function as hook and loop fasteners that enable attachment of a slide fastener to heat insulation sheets. [See Inoac Abs. and Figs.]

However, Inoac does not teach or suggest “at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover **to form a substantially air tight seal over said portion of said form-fitting cover**, wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion of said object,” as presently claimed in new claim 28. Nothing in Inoac teaches or suggests anything, let alone a coupling member, that forms a substantially air-tight seal over a form-fitting cover.

There is no motivation to combine Nakajima and Inoac. Nakajima purports to solve a problem of material wasted in creating a cover and attempts to solve that problem by forming a cover of cut to fit different sides of a container that consists of two sheets attached together with fasteners and ropes. Yet, Inoac attempts to solve a problem of attaching sliding members to heat insulation sheets. One attempting to attach sliding members to heat insulation sheets would not have motivation to look to a method of cutting a cover to fit different sides of a container.

Similarly, one attempting to reduce material waste in cutting a cover to fit different sides of a container would not have motivation to turn to a manner of attaching sliding members to heat insulation sheets. There are no heat insulation sheets taught or suggested by Nakajima.

Accordingly, this situation is not at all like the situation in *KSR v. Teleflex*, cited previously, because in that case it was determined that a motivation for the proposed combination did exist. Here, it does not .

Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28.

The combination of Nakajima and Inoac fails to teach or suggest at least “at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover to form a substantially air tight seal over said portion of said form-fitting cover, wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion of said object,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing.

Accordingly, the Examiner has not made the requisite showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independant claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Inoac is overcome.

Nothing in Semons makes up for the deficiencies of Nakajima. Semons teaches a zipper that may be placed onto a cover to allow access through the cover. However, Semons does not teach or suggest “at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover to form a substantially air tight seal over said portion of said form-fitting cover, wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion of said object,” as presently claimed in new claim 28. Semons does not teach or suggest that the cover is adapted to form a substantially air tight seal over at least one portion of an object therebeneith. Semons does not teach or suggest at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover to form a substantially air tight seal over said portion of said form-fitting cover.

There is no motivation to combine Nakajima and Semons. Nakajima purports to solve a problem of material wasted in creating a cover and attempts to solve that problem by forming a cover of cut to fit different sides of a container that consists of two sheets attached together with fasteners and ropes. Yet, Semons attempts to solve a problem of attaching a zipper to a tarp to allow access to objects beneath the cover. One attempting to attach sliding a zipper to a tarp would not have motivation to look to a method of cutting a cover to fit different sides of a container. Similarly, one attempting to reduce material waste in cutting a cover to fit different sides of a container would not have motivation to turn to a manner of attaching a zipper to a tarp. Accordingly, this situation is not at all like the situation in *KSR v. Teleflex*, cited previously, because in that case it was determined that a motivation for the proposed combination did exist. Here, it does not.

Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28. The combination of Nakajima and Semons fails to teach or suggest at least “at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover to form a substantially air tight seal over said portion of said form-fitting cover, wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion of said object,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing. Accordingly, the Examiner has not made the requisite showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independent claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which

depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Semons is overcome.

Nothing in Talbot makes up for the deficiencies of Nakajima. Talbot teaches a method for shrink-film covering an aircraft. However, Talbot does not teach or suggest **“at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover to form a substantially air tight seal over said portion of said form-fitting cover,** wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion of said object, as presently claimed. In fact, Talbot does not teach or suggest anything that forms a substantially air tight seal over a form-fitting cover.

There is no motivation to combine Nakajima and Talbot. Nakajima purports to solve a problem of material wasted in creating a cover and attempts to solve that problem by forming a cover of cut to fit different sides of a container that consists of two sheets attached together with fasteners and ropes. Yet, Talbot attempts to solve a problem of a manner of shrink film covering an aircraft. One attempting to shrink film cover an aircraft would not have motivation to look to a method of cutting a cover to fit different sides of a container. Similarly, one attempting to reduce material waste in cutting a cover to fit different sides of a container would not have motivation to turn to a manner of shrink film covering an aircraft. Accordingly, this situation is not at all like the situation in *KSR v. Teleflex*, cited previously, because in that case it was determined that a motivation for the proposed combination did exist. Here, it does not.

Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28. The combination of Nakajima and Talbot fails to teach or suggest at least **“at least one coupling member adapted to be coupled onto at least one portion of a form-fitting cover to form a substantially air tight seal over said portion of said form-fitting cover,** wherein said form-fitting cover is adapted to cover an object to create a substantially air tight seal over at least one portion

of said object,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing.

Accordingly, the Examiner has not made the requisite showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independent claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Talbot is overcome.

Second, Nakajima also does not teach or suggest “a separating assembly on said coupling member, **wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover and said at least one portion of said object therebeneath where an access hole is cut through said at least one portion of said form-fitting cover,**” as presently claimed in new claim 28. Nothing in Nakajima teaches or suggests anything that is adapted to be opened to break a substantially air tight seal over a form-fitting cover, nor a separating assembly which is adapted to be opened to do so. Nothing in Nakajima teaches or suggests breaking a substantially air tight seal over a form-fitting cover to allow access to an object therebeneath where an access hole is cut through at least a portion of the form-fitting cover.

Nothing in Inoac makes up for the deficiencies of Nakajima. Inoac does not teach or suggest “a separating assembly on said coupling member, **wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover** and said at least one portion of said object therebeneath

where an access hole is cut through said at least one portion of said form-fitting cover,” as presently claimed in new claim 28. Nothing in Inoac teaches or suggests anything adapted to be opened to break a substantially air tight seal over a form-fitting cover, nor a separating assembly which is adapted to be opened to do so. .

As discussed above, there is no motivation to combine Nakajima and Inoac. Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28. The combination of Nakajima and Inoac fails to teach or suggest at least “a separating assembly on said coupling member, wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover and said at least one portion of said object therebeneith where an access hole is cut through said at least one portion of said form-fitting cover,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing. Accordingly, the Examiner has not made the requisite showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independant claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Inoac is overcome.

Nothing in Semons makes up for the deficiencies of Nakajima. Semons does not teach or suggest “a separating assembly on said coupling member, **wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover** and said at least one portion of said object therebeneith

where an access hole is cut through said at least one portion of said form-fitting cover,” as presently claimed in new claim 28. Nothing in Semons teaches or suggests anything adapted to be opened to break a substantially air tight seal over a form-fitting cover, nor a separating assembly which is adapted to be opened to do so. .

As discussed above, there is no motivation to combine Nakajima and Semons. Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28. The combination of Nakajima and Semons fails to teach or suggest at least “a separating assembly on said coupling member, wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover and said at least one portion of said object therebeneith where an access hole is cut through said at least one portion of said form-fitting cover,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing. Accordingly, the Examiner has not made the requisite showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independant claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Semons is overcome.

Nothing in Talbot makes up for the deficiencies of Nakajima. Talbot does not teach or suggest **“a separating assembly on said coupling member, wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover and said at least one portion of said object**

therebeneith where an access hole is cut through said at least one portion of said form-fitting cover,” as presently claimed in new claim 28. Nothing in Talbot teaches or suggests a separating assembly, anything adapted to be opened to break a substantially air tight seal over a form-fitting cover, anything adapted to be opened to allow access to at least one portion of an object beneath the cover where an access hole is cut through at least one portion of the cover, nor a separating assembly which is adapted to be opened to do so.

As discussed above, there is no motivation to combine Nakajima and Talbot. Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28. The combination of Nakajima and talbot fails to teach or suggest at least “a separating assembly on said coupling member, wherein said separating assembly is adapted to be opened to break said substantially air tight seal to allow access to said at least one portion of said form-fitting cover and said at least one portion of said object therebeneith where an access hole is cut through said at least one portion of said form-fitting cover,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing. Accordingly, the Examiner has not made the requisite showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independant claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Talbot is overcome.

Third. Nakajima also does not teach or suggest “wherein said separating assembly is **adapted to be closed to seal said coupling member over said access hole so as to create a substantially air tight seal over said at least one portion of said object,**” as presently claimed in new claim 28. Nothing in Nakajima teaches or suggests sealing a separating assembly over an access hole in a form-fitting cover so as to create a substantially air tight seal over at least one portion of an object therebeneith. Nothing in Nakajima teaches or suggests a separating assembly that is adapted to be closed to seal a coupling member in this manner.

Nothing in Talbot makes up for the deficiencies of Nakajima. Talbot does not teach or suggest “**wherein said separating assembly is adapted to be closed to seal said coupling member over said access hole so as to create a substantially air tight seal over said at least one portion of said object,**” as presently claimed in new claim 28. Nothing in Talbot teaches or suggests a separating assembly, cutting an access hole in a form-fitting cover, anything adapted to be closed to seal a coupling member over an access hole, nor to do so to create a substantially air tight seal over a form-fitting cover.

As discussed above, there is no motivation to combine Nakajima and Talbot. Yet, even if we assume that there was motivation to combine these two references, which is not conceded, the proposed combination would fail to provide all the elements of claim 28. The combination of Nakajima and talbot fails to teach or suggest at least “wherein said separating assembly is adapted to be closed to seal said coupling member over said access hole so as to create a substantially air tight seal over said at least one portion of said object,” as presently claimed in new claim 28. Despite the Examiner’s rejection, it is respectfully asserted that if one of ordinary skill in the art had both applied documents before him or her, that person would still be unable to produce subject matter as has been claimed and described in the present application because at least this element would be missing. Accordingly, the Examiner has not made the requisite

showing that this combination of art teaches or suggests each and every element of new claim 28 and the rejection must fail.

Because claims 29-36 depend from independent claim 28, the rejection for these claims must fail too. Similarly, because independent claims 15, 37, 47, 51 and 52 and the claims which depend therefrom contain similar limitations, any rejection based upon the combination of Nakajima and Talbot is overcome.

Thus, the combination of Nakajima and Inoac or Semons or Talbot fails to teach or suggest each and every element of new claim 28 and the claims which depend therefrom (claims 29-36). Because claim 15 and new claims 37-53 contain similar limitations, the combination of Nakajima and Inoac similarly fails to teach each and every element of new claims 37-53. Accordingly, Applicant respectfully traverses the Examiner's rejections and believes that the rejections based upon this art are overcome. Because the rejections are improper, Applicant respectfully requests that the Examiner withdraw these rejections.

Applicant notes that additional distinctions between the cited prior art and the rejected claims exist; however, the foregoing is believed sufficient to address the Examiner's rejections. Likewise, failure of Applicant to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing and, therefore, it is believed not necessary to respond to every position taken by the Examiner with which Applicant does not agree.

Conclusion

In light of the foregoing, consideration and allowance of the claims is hereby earnestly requested. Consideration of the present patent application and early allowance of all the claims is respectfully requested. Please charge any underpayments or credit any overpayments to Deposit Account No. 50-3703.

Respectfully submitted,

Berkeley Law and Technology Group, LLP

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